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USPTO
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DIVISION

2011 JUN 15 PM 4:23

United States Patent & Trademark Office
Commissioner for Patents /Office of Petitions
P.O. Box 1450
Alexandra, VA 22313

RE: Patent # 6,049,910 >> Request /Petition For Reconsideration Letters Enclosed
Payment Fee Amount Sent \$ 400.00
Responding to letter mailed date of April 13th 2011 – From: Office of Petitions

Dear Commissioner of Patents,

On Page 4 of your “Decision On Petition letter, dated April 13th, 2011, under the Analysis heading, in the last paragraph, second sentence, it states that; The record discloses that petitioner submitted a maintenance fee payment of \$1,180, that was \$30 short of the \$1,210 due at the time, on April 16th, 2008. I have enclosed a copy of the cashier’s check I sent in for the amount of \$1,215.00 and a enclosed “NOTICE OF NON-ACCEPTANCE OF PATENT MAINTENANCE FEE” which shows a “PAYMENT RECEIPT DATE for the \$1,215.00 on: 04/16/2008. I hope this clarifies all matters and allows for an immediate reinstatement of my patent 6, 049, 910. Thank you for your considerations in these matters.

MY PETITION FOR RECONSIDERATION IS BELOW IF NECESSARY.
PLEASE HANDLE ACCORDINGLY. THANK YOU!

In the Analysis portion of the “Decision On Petition” letter sent to me on April 13th, 2011, it was stated by me that “loss of work-leading to financial hardship” was one of the reasons for my inaccurate payment being unavoidable. After careful review of your Decision Letter and my own analysis and reconsideration I am withdrawing my financial hardship as a point of contention. Though I had financial problems during this time period because of my medical condition it appears to be irrelevant because I was able to generate the funds necessary to pay my maintenance fee on time. The burden of explaining the more important discrepancy of why the maintenance fee I submitted was \$30.00 dollars deficient appears to be the burden you are requesting that I address for reconsideration and re-instatement of my patent.

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400.00 OP

I would like to acknowledge that I never received any correspondence from April 19th, 2007 through April 16th, 2008 from the Office of Petitions that stated that my maintenance fee had been increased \$30.00 dollars. I understand that this does not excuse me from my responsibility as a patent holder, but I think it is important to make the point.

During the time line of 2007 / 2008 I was not in a normal state of mind because of my medical condition at the time. Thus it is possible that I could of unintentionally and unavoidably not follow-up on important but minor details, like making sure my maintenance fee had not increased before I sent in my 2nd maintenance fee payment. During this period I was not efficient as I normally would be in regards to effectively applying ordinary human diligence that is generally used and observed by prudent and careful men in relation to their most important business. Due to my medical condition I was just the opposite. When I am in my normal mind-set I am a very detailed oriented person.

I have enclosed a letter from my orthopedic doctor, Gerald Finerman to confirm my medical conditions during the times I have indicated. The medical facts and circumstances that impacted my mind-set which led to me not following-up on the necessary details resulting on not paying the accurate amount due are addressed in his letter.

Hopefully, the petition information presented will allow you to rule in favor of reconsideration and reinstatement of patent # 6,049,910. If there is any additional information you need from me or Dr. Finerman before you make your final decision I would appreciate it if we are given the opportunity to provide the requested information.

I want to thank the Commissioner of Petitions and the Office of Petitions for giving me the opportunity to present my petition for reconsideration. This is a very important decision and I am hoping for the best outcome for all parties involved in this decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andre McCarter', written over a horizontal line.

Andre McCarter

06-14-11

MA



UNITED STATES PATENT AND TRADEMARK OFFICE

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RECEIPTS ACCOUNTING

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov



2011 JUN 15 PM 4:23

ANDRE MCCARTER
5333 BALBOA BLVD #127
ENCINO CA 91316

MAILED

APR 13 2011

OFFICE OF PETITIONS

In re Patent No. 6,049,910
Issue Date: April 18, 2000
Application No. 09/294,528
Filed: April 19, 1999
Title: Athletic Training Glove

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DECISION ON PETITION
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This is a decision on the petition to accept the unavoidably delayed payment of the maintenance fee under 37 CFR 1.378(b), filed February 28, 2011.

The petition is **DISMISSED**.

The above-identified patent issued on April 18, 2000. Therefore, the window for paying the second maintenance fee extended from April 18, 2007 to October 18, 2007 without surcharge, and from October 19, 2007 to April 18, 2008, with surcharge. No maintenance fee and surcharge having been received in full on or before April 18, 2008, the patent expired on April 19, 2008. Patentee filed a petition under 37 CFR 1.377 on June 8, 2008, explaining that he did timely file the maintenance fee on April 16, 2008, but that it was \$30 deficient. The petition was dismissed in a decision mailed on March 20, 2009, explaining that patentee did not submit the \$200 fee required for the petition, and also explaining that a petition under 37 CFR 1.377 would need to demonstrated that the maintenance fee was timely paid **in full**. The two year deadline for filing a petition to accept the unintentionally delayed payment of the maintenance fee expired on April 18, 2010. Patentee filed a letter on April 15, 2010,

requesting a "grace period" to allow him to file a petition to accept the unintentionally delayed payment of the maintenance fee beyond two years after expiration. However, as the two year deadline is set by statute, it can not be waived. Accordingly, patentee's request was dismissed in a decision mailed on July 19, 2010.

Relevant Statutes and Regulations

35 U.S.C. § 41(c)(1) states that:

The Commissioner may accept the delayed payment of any maintenance fee required ... after the six month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable.

37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) The required maintenance fee set forth in §1.20(e) through (g);
- (2) The surcharge set forth in §1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

§ 1.378(b)(3) is at issue in this case. Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful

men in relation to their most important business. In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32 (N.D. Ind. 1987).

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable. Cf. Commissariat A. L'Energie Atomique v. Watson, 274 F.2d 594, 597, 124 USPQ 126, 128 (D.C. Cir. 1960) (35 U.S.C. § 133 does not require the Commissioner to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Commissioner that the delay in payment of a maintenance fee is unavoidable. See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991), cert. denied, 502 U.S. 1075 (1992); Ray v. Lehman, 55 F. 3d 606, 608 - 609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995).

Analysis

Petitioner has not demonstrated unavoidable delay within the meaning of 35 U.S.C. §41(c)(1) and 37 CFR 1.378(b).

Petitioner states that his late payment was unavoidable due to "injury disability and loss of work" prior to April 18, 2008, and being in "financial recovery mode" from 2008 into 2011.

When a petitioner asserts financial hardship, the Office needs to see copies of any bank records, tax returns, and W-2 forms for the period in question.¹ Here, the period in question is from the date the patent expired, April 19, 2008, up until the filing date of the instant petition, February 28, 2011. In addition,

¹ Petitioner is encouraged to redact any identifying information he would wish to remain confidential - social security number, bank account numbers, etc.

the Office requests that petitioner provide an accounting of his expenses throughout the period.

Furthermore, there is a discrepancy in the record. The record discloses that petitioner submitted a maintenance fee payment of \$1,180, that was \$30 short of the \$1,210 due at the time, on April 16, 2008. Now petitioner is asserting that due to financial hardship, he was unavoidably prevented from paying the maintenance fee on or before April 18, 2008. It is not clear then how petitioner was able to pay \$1,180 on April 16, 2008. Rather, it appears that petitioner made an unintentional mistake in not paying the correct maintenance fee amount on April 16, 2008. Petitioner would need to overcome this discrepancy to support a showing of unavoidable delay.

Conclusion

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in § 1.17(f). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Accordingly, on request for reconsideration, it is extremely important that petitioner supply any and all relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then the \$1240 maintenance fee and the \$200 surcharge set forth in § 1.20(i) are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed.

(Petitioner may request a refund of the maintenance fee and surcharge by writing to the Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria VA 22313-1450). A copy of the last decision rendered should accompany the request for refund).

Further correspondence with respect to this matter should be addressed as follows:

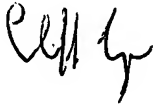
By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

Patent No. 6,049,910

Page 5

By FAX: (571)273-8300
Attn: Office of Petitions

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

P75M

ANDRE MCCARTER
18333 HATTERAS STREET
SUITE #43
TARZANA CA 91356

DATE PRINTED

05/19/08

NOTICE OF PATENT EXPIRATION

According to the records of the U.S. Patent and Trademark Office (USPTO), payment of the maintenance fee for the patent(s) listed below has not been received timely prior to the end of the six-month grace period in accordance with 37 CFR 1.362(e). THE PATENT(S) LISTED BELOW HAS THEREFORE EXPIRED AS OF THE END OF THE GRACE PERIOD. 35 U.S.C. 41(b). Notice of the expiration will be published in the USPTO Official Gazette.

Expired patents may be reinstated in accordance with 37 CFR 1.378 if upon petition, the maintenance fee and the surcharge set forth in 37 CFR 1.20(i) are paid, AND the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional. 35 U.S.C. 41(c)(1).

If the Director accepts payment of the maintenance fee and surcharge upon petition under 37 CFR 1.378, the patent shall be considered as not having expired but would be subject to the intervening rights and conditions set forth in 35 U.S.C. 41(c)(2).

For instructions on filing a petition under 37 CFR 1.378 to reinstate an expired patent, customers should call the Office of Petitions Help Desk at 571-272-3282 or refer to the USPTO Web site at www.uspto.gov/web/offices/pac/dapp/petitionspractice.html. The USPTO also permits reinstatement under 37 CFR 1.378(c) by electronic petition (e-petition) using EFS-Web; e-petitions may be automatically granted if all the eligibility requirements are met. For further information on filing an e-petition, please call the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100 or refer to the EBC's e-petition guide at www.uspto.gov/ebc/portal/efs/petition_quickstart.pdf.

PATENT NUMBER	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPLICATION FILING DATE	EXPIRATION DATE	ATTORNEY DOCKET NUMBER
6049910	09294528	04/18/00	04/19/99	04/18/08	71404/91137-

NOTE: This notice was automatically generated based on the amount of time that elapsed since the date a patent was granted. It is possible that the patent term may have ended or been shortened due to a terminal disclaimer that was filed in the application. Also, for any patent that issued from an application filed on or after June 8, 1995 containing a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), the patent term ends 20 years from the date on which the earliest such application was filed, unless the term was adjusted or extended under 35 U.S.C. 154 or 156.



UNITED STATES PATENT AND TRADEMARK OFFICE

PTO-2142 (09-05)

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ANDRE MCCARTER
18333 HATTERAS STREET
SUITE #43
TARZANA, CA 91356



April 23, 2008

NOTICE OF NON-ACCEPTANCE OF PATENT MAINTENANCE FEE

REGARDING PATENT NUMBER: 6049910

PAYMENT STATUS:

Payment Amount Received: \$ 1,215.00Payment Year 7.5 (e.g., 3.5, 7.5, 11.5)PAYMENT RECEIPT DATE 04/16/2008
(Mailroom Date Stamp)

Your payment was not accepted for the following reason(s):

- ☐ 1. The maintenance fee for the above-identified patent was previously paid on _____.
☐ Information regarding the previous payment is stated in item 8 below.
- ☒ 2. The patent expired on 04/18/2008. See "Patent Expiration" section below.
- ☐ 3. The fee was paid too early. See 37 CFR 1.366(b). Pursuant to 37 CFR 1.362(d), the payment window will open for the above-identified patent on _____.
- ☐ 4. Your payment was not sufficient to cover the maintenance fee and any required surcharge for the above-identified patent. An additional amount of \$ _____ is/was required.
- ☐ 5. The above-identified patent was reissued. In accordance with 37 CFR 1.366(d), the reissue patent number and reissue application number must be provided.
- ☐ 6. The payment did not include corresponding patent and application numbers, and was not specially accepted.
- ☐ 7. The above-identified patent is not subject to maintenance fees. No maintenance fees are due on utility patents filed before 12/11/80. No maintenance fees are due on design patents or on plant patents. See 37 CFR 1.362(a) and (b). (The "Resubmitting Maintenance Fee Payment" and "Patent Expiration" sections below do not apply.)
- ☒ 8. Other: Your check payment was \$30 short of the amount needed and your patent is now expired. Please contact our Petitions Dept. to have your patent reinstated. Their number is 571-272-3282.

YOUR CHECK #49663 IN THE AMOUNT OF \$1,215.00 IS ATTACHED

Resubmitting Maintenance Fee Payment

The six (6) month "grace period" for paying the maintenance fee for the above-identified patent begins on _____ and ends on _____. In addition to the maintenance fee of \$ _____, a resubmitted payment filed in the USPTO during the 6 month "grace period" is required to include a surcharge of \$ _____. (See "Note" at the bottom of this Notice.)

To avoid patent expiration, the maintenance fee plus any required surcharge must be resubmitted in a manner that rectifies all of the indicated reason(s) for payment non-acceptance and *must be filed on or before the date the 6 month "grace period" ends*. Send by facsimile to the Office of Finance, Maintenance Fee Branch at (571) 273-6500, or by mail to the following address: Mail Stop M Correspondence, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450, to the attention of the individual who has signed below.

Patent Expiration

The date the six (6) month "grace period" ends becomes the expiration date of the above-identified patent if the required amount for paying the maintenance fee is not filed in the USPTO by that date. See 37 CFR 1.362(g). Expired patents may be reinstated if a petition as set forth in 37 CFR 1.378 is granted. If the above-identified patent has expired and reason number 5 or 6 above is the only reason indicated for payment non-acceptance, it is possible that the payment may be accepted if resubmitted with a petition as set forth in 37 CFR 1.377, rather than 37 CFR 1.378.

If you have any questions regarding this Notice, contact the Office of Finance, Maintenance Fee Branch at (571) 272-6500. Please ask for the individual who has signed below.

George Allen (571) 272-6364

Printed Name of USPTO Representative

Signature of USPTO Representative

NOTE: All USPTO fees (including patent maintenance fees) are subject to change. If you are making a payment, visit the www.uspto.gov website or contact the Office of Finance to verify the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.



DEPARTMENT OF ORTHOPAEDIC SURGERY
DAVID GEFFEN SCHOOL OF MEDICINE AT UCLA
CENTER FOR THE HEALTH SCIENCES
BOX 956902
LOS ANGELES, CALIFORNIA 90095-6902

May 18, 2011

United States Patent & Trademark Office
Commissioner for Patents/Office of Petitions
P. O. BOX 1450
Alexandra, VA 22313

RE: Acknowledgement Letter for patient Andre McCarter
Patent: 6049910

Dear Commissioner of Petitions.

Mr. Andre Mc Cater is a patient of mine who has been under my care since September 11, 2007. Since 2008 he has had multiple orthopaedic surgical procedures in which he has been under strong narcotic medication for pain control. During the time of his recovery his decision making and reasoning may have been impaired.

Please take in consideration his impairment during that period of time. Should you have any questions, please feel free to call my office at 310 825-6019.

Sincerely,

A handwritten signature in cursive script, reading "Gerald A.M. Finerman".

Gerald A.M. Finerman, MD
UCLA Professor
Dorothy and Leonard Straus Scholar
Department of Orthopaedic Surgery
David Geffen UCLA School of Medicine

GAF: on